

Stricken language would be deleted from and underlined language would be added to law as it existed prior to the 82nd General Assembly.

1 State of Arkansas
2 82nd General Assembly
3 Regular Session, 1999
4

As Engrossed 4/2/99
A Bill

Act 1561 of 1999
SENATE BILL 827

5 By: Senator B. Walker
6 By: Representative Booker
7

8
9 **For An Act To Be Entitled**

10 "AN ACT TO SPECIFY CONDUCT INCLUDING MULTIPLE
11 VIOLATIONS OF MUNICIPAL HEALTH AND SAFETY CODES AS
12 CONSTITUTING A COMMON NUISANCE SUBJECT TO INJUNCTIONS,
13 EVICTION AND DAMAGES; AND FOR OTHER PURPOSES. "
14

15 **Subtitle**

16 "AN ACT TO SPECIFY CONDUCT INCLUDING
17 MULTIPLE VIOLATIONS OF MUNICIPAL HEALTH
18 AND SAFETY CODES AS CONSTITUTING A
19 COMMON NUISANCE SUBJECT TO INJUNCTIONS,
20 EVICTION AND DAMAGES. "
21

22
23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
24

25 SECTION 1. Intent.

26 The intent of the General Assembly of the State of Arkansas herein is to
27 enact civil remedies that eliminate any conduct within a municipality which
28 constitutes a nuisance.
29

30 SECTION 2. Common nuisance declared.

31 Conduct within a municipality which unreasonably interferes with use and
32 enjoyment of lands of another, including conduct on property which disturbs
33 peaceful, quiet and undisturbed use and enjoyment of nearby property,
34 constitutes common nuisance. For purposes of this subchapter, common nuisance
35 shall not include conduct which is permitted by and in conformance with city
36 ordinances. Common nuisance shall include any three (3) separate municipal

1 court convictions of health and safety code violations with respect to any one
2 (1) lot or parcel of property within a one (1) year period or one (1) such
3 conviction if the offense constitutes an imminent threat to the health, safety
4 or welfare of any citizen. Such conduct is declared to be detrimental to the
5 law-abiding citizens of the municipality and may be subject to an injunction,
6 a court-ordered eviction, or a cause of action for damages as provided for in
7 this subchapter.

8
9 SECTION 3. Action to abate – permanent injunction – verification of
10 complaint.

11 (a) Whenever there is reason to believe such a common nuisance is kept
12 or maintained, or exists in any city, a chancery court may enjoin permanently
13 the person conducting or maintaining the nuisance and the owner, lessee, or
14 agent of the building or place in or upon which the nuisance exists from
15 directly or indirectly maintaining or permitting the nuisance.

16 (b) For activities involving multiple convictions of municipal code
17 violations, the city attorney may bring the action permitted herein. For
18 other activities constituting a nuisance as defined in this section, any
19 citizen of the city may bring the action in his or her own name.

20 (c) The complaint in the action shall be certified unless the action is
21 brought by the city attorney.

22
23 SECTION 4. Temporary injunction – bond required – precedence.

24 (a) If the existence of the nuisance is shown in the action to the
25 satisfaction of the court, the court shall allow a temporary writ of
26 injunction to abate and prevent the continuance or recurrence of the nuisance.

27 (b) On granting the temporary writ, the court shall require a bond on
28 the part of the applicant to the effect that the applicant will pay to the
29 enjoined defendant such damages, not exceeding an amount to be specified, as
30 the defendant sustains by reason of the injunction should the court finally
31 decide that the applicant was not entitled to the injunction. No bond shall be
32 required where the proceeding is instituted by the city attorney.

33 (c) The action shall be filed in the chancery court and have precedence
34 over all other actions except election contests, hearings on injunctions, and
35 hearing under Arkansas Code 5-74-109 and Arkansas Code 16-105-403.

36

1 SECTION 5. Dismissal for want of prosecution.

2 (a) If the complaint is filed by a citizen, it shall not be dismissed
3 by the plaintiff for want of prosecution except upon a sworn statement made by
4 the plaintiff setting forth the reasons why the action shall be dismissed, and
5 by dismissal ordered by the court.

6 (b) Costs. If the action is brought by a citizen and the court finds
7 there was no reasonable ground or cause for the action, costs shall be
8 assessed against the plaintiff.

9
10 SECTION 6. Order of abatement - lien for costs - enforcement.

11 (a) If the existence of the nuisance is established in the action, an
12 order of abatement shall be entered as part of the judgment in the case, and
13 plaintiff's costs in carrying out the order shall constitute a lien upon the
14 property, building, or place.

15 (b) The lien is enforceable and collectible by execution issued by order
16 of the court.

17
18 SECTION 7. Order of abatement - damages.

19 (a) If the existence of the nuisance is established in the action, an
20 order of abatement shall be entered as part of the judgment. The order shall
21 provide for any appropriate equitable relief as determined by the court to be
22 necessary to abate the nuisance and may further provide, if determined to be
23 the least restrictive alternative available to effectively accomplish the
24 abatement, for the closing of the building or place for such period of time as
25 determined to be necessary by the court as adequate to abate the nuisance.

26 (b) An alternative to closure may be considered only as provided in
27 this section.

28 (c) If the court finds that any vacancy resulting from closure of the
29 building or place may create a nuisance or that closure is otherwise harmful
30 to the community, in lieu of ordering the building or place closed, the court
31 may order the person who is seeking to keep the premises open to pay damages
32 to the city in an amount equal to the fair market rental value of the building
33 or place, for such period of time as determined appropriate by the court.

34 (d) These funds shall be used either to investigate and litigate future
35 nuisance abatement action or used by the city for the purpose of neighborhood
36 safety and enhancement programs.

1 (e) For purposes of this section, the actual amount of rent being
2 received for the rent of the building or place, or the existence of any
3 vacancy therein, may be considered, but shall not be the sole determinant of
4 the fair market rental value.

5 (f) Expert testimony may be used to determine the fair market rental
6 value.

7 (g) In addition, the court may award damages equal to the plaintiff's
8 cost in the investigation and litigation of the abatement action, not to
9 exceed five thousand dollars (\$5,000) against any or all of the defendants
10 based upon the severity of the nuisance and its duration.

11 (h) The damages may be collected in any manner provided for the
12 collection of any civil judgment.

13 (i) While the order of abatement remains in effect, the building or
14 place is in the custody of the court.

15
16 SECTION 8. Release of the building to owner.

17 (a) If the owner of the building or place has not been guilty of any
18 contempt of court in the proceedings and appears and pays all costs, fees, and
19 allowances that are liens on the building or place and files a bond in the
20 full value of the property conditioned that the owner will immediately abate
21 any nuisance that may exist at the building or place and prevent it from being
22 a nuisance within a period of one (1) year thereafter, the court may, if
23 satisfied of the owner's good faith, order the building or place to be
24 delivered to the owner and the order of abatement canceled so far as it may
25 relate to the property.

26 (b) The release of property under the provisions of this section does
27 not release it from any judgment, lien, penalty, or liability to which it may
28 be subject.

29
30 SECTION 9. Lien – enforcement.

31 (a) Whenever the owner of a building or place upon which the act or
32 acts constituting contempt have been committed, or the owner of any interest
33 therein has been guilty of contempt of court and fined in any proceedings
34 under this subchapter, the fine is a lien upon the building or place to the
35 extent of his interest in it.

36 (b) The lien is enforceable and collectible by execution issued by

1 order of the court.

3 SECTION 10. Violations – criminal penalties.

4 A violation of or disobedience of the injunction or order for abatement
5 is punishable as contempt of court by a fine of not less than two hundred
6 dollars (\$200) nor more than one thousand dollars (\$1,000) or by imprisonment
7 in the county jail for not less than one (1) month nor more than six (6)
8 months, or both.

10 SECTION 11. All provisions of this act of a general and permanent
11 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
12 Code Revision Commission shall incorporate the same in the Code.

14 SECTION 12. If any provision of this act or the application thereof to
15 any person or circumstance is held invalid, such invalidity shall not affect
16 other provisions or applications of the act which can be given effect without
17 the invalid provision or application, and to this end the provisions of this
18 act are declared to be severable.

20 SECTION 13. All laws and parts of laws in conflict with this act are
21 hereby repealed.

22 /s/ B. Walker

25 APPROVED: 4/15/1999